

SUBJECT: Modifying fraud and abuse recovery processes at the OIG

COMMITTEE: Human Services — committee substitute recommended

VOTE: 9 ayes — Raymond, Frank, Keough, Klick, Miller, Minjarez, Rose, Swanson, Wu

0 nays

WITNESSES: For — (*Registered, but did not testify*: Lee Spiller, Citizens Commission on Human Rights)

Against — None

On — (*Registered, but did not testify*: Sylvia Kauffman, HHSC-Inspector General)

BACKGROUND: Government Code, sec. 531.102 makes the Health and Human Services Commission's Office of Inspector General (OIG) responsible for the prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including Medicaid, the Children's Health Insurance Program, and any other state-administered health or human services program that is wholly or partly federally funded. OIG also enforces state law related to the provision of those services. HHSC may obtain any information or technology necessary to enable OIG to meet its responsibilities.

Observers say that state law should clarify the process for payment recovery efforts from fraud and abuse investigations and should give HHSC and OIG more flexibility to use technology to detect such fraud.

DIGEST: CSHB 2969 would allow a Medicaid managed care organization (MCO) to retain half of any money recovered through the MCO's fraud or abuse recovery efforts. The bill would require the MCO to remit the other half of the recovered money to the Health and Human Services Commission's

Office of Inspector General (OIG). OIG would be required to coordinate with appropriate MCOs to ensure that both did not simultaneously pursue recovery efforts for the same case of fraud, waste, or abuse.

If the OIG discovered fraud, waste, or abuse in Medicaid or the Children's Health Insurance Program (CHIP) in the performance of its duties, the OIG could recover payments made to the provider as a result of the fraud, waste, or abuse.

The bill also would require OIG to prepare a final report on each inspection it conducted regarding Medicaid fraud or abuse. The final report would include:

- a summary of the office's activities in conducting the inspection;
- a statement regarding whether the inspection resulted in a finding of wrongdoing; and
- a description of any findings of wrongdoing.

A final report on an inspection would be subject to required disclosure under the Public Information Act. All information and materials compiled during the inspection would remain confidential and not subject to required disclosure by subpoena. A confidential draft report on an inspection that concerned the death of a child could be shared with the Department of Family and Protective Services and, if shared, would remain confidential and not subject to disclosure.

All information and materials subpoenaed or compiled by OIG in connection with an inspection would be confidential and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than OIG, the attorney general, or the employees or agents of either. The information could be disclosed to the state auditor's office, law enforcement agencies, and other entities as permitted by other law.

HHSC would be authorized to use technology other than learning or neural network technology allowed under current law to identify and deter

Texas Medicaid fraud. The bill would allow data processing to be maintained as an independent subset for security purposes. Each month, the technology would be required to match vital statistics unit death records with Medicaid claims filed by a provider.

If an MCO or its contractor discovered fraud or abuse in Medicaid or CHIP, the MCO would be required to immediately submit written notice to OIG and the attorney general's office as specified by OIG and containing a detailed description of the fraud or abuse and each payment made to a provider as a result of the fraud or abuse.

If, before implementing any provision of the bill, a state agency determined that a waiver or authorization from a federal agency was necessary to implement that provision, the affected agency would request the waiver or authorization and could delay implementing that provision until the waiver or authorization was granted.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017, and would apply only to an amount of money recovered on or after that date.

NOTES:

The Legislative Budget Board's fiscal note estimates that, depending upon the amount collected by MCOs from providers in managed care and remitted to the state, there would be an indeterminate positive fiscal impact to Texas.